THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No.15757 of 2006

Dated: 31.07.2006

Between:

M. Laxmi Narayana

petitioner

And

The Hon'ble Labour Court – III, Hyderabad
Rep by its Presiding Officer and another Respondents

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No.15757 of 2006

Order:

This writ petition is filed seeking a Mandamus declaring the award dated 31.12.1992 passed by respondent No.1-Labour Court-III, Hyderabad, in I.D. No. 86 of 1992, in so far as not awarding the back wages and withholding one annual increment as illegal and arbitrary.

The petitioner, who is a Conductor of respondent No.2-A.P.S.R.T.C., was charge sheeted alleging that he failed to observe the rule 'issue and start' and failed to issue tickets to 20 passengers who were traveling from Baligira to Gadwal, though he collected the fare. The petitioner submitted his explanation to the charges. Thereafter, an enquiry was conducted into the charges. The Enquiry Officer, having conducted the enquiry, held the charges proved. Based on the findings of the enquiry report, a notice calling upon the petitioner to show cause as to why he shall not be removed from service was issued. Upon considering the explanation submitted by the petitioner thereto, vide order dated 06.11.1981, the 2nd respondent-Corporation ordered his removal. Against the order of removal, the petitioner raised an industrial dispute in I.D. No. 86 of 1992 and the Labour Court, vide the award impugned in the writ petition, set aside the order of removal and directed the 2nd respondent-Corporation to reinstate the petitioner into service without back wages and withholding one annual increment as a measure of punishment. Assailing the award of the Labour Court in so far as denying the back wages and withholding one annual increment, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent-APSRTC.

The learned counsel for the petitioner submitted that when the

Labour Court came to a conclusion that the petitioner is entitled for reinstatement, automatically he is eligible for the back wages and the annual increment and that the award of the Labour Court in so far as denying the back wages and withholding one annual increment is disproportionate to the proved misconduct. He, thus, prayed to set aside the award passed by the Labour Court in so far as denying the back wages and withholding one annual increment and allow the writ petition.

Learned Standing Counsel for the respondent-Corporation contended that the punishment imposed against the petitioner is not disproportionate to the proved misconduct. Given the misconduct, alleged against the petitioner, which stood proved, the petitioner has to be dismissed from service, but the disciplinary authority has imposed a lesser punishment of removal from service, and the Labour Court, on re-appreciation of the entire material on record and holding that the punishment of removal of the petitioner from service is not in proportion to the charges proved, modified the punishment and directed the respondent-Corporation to reinstate the petitioner into service as Conductor, but denied the back-wages and withhold one annual increment, and no interference is called for therewith.

The petitioner, as can be seen from the award, did not allege any procedural irregularity in the conduct of the enquiry. The petitioner was charge sheeted alleging that he failed to observe the rule ‘issue and start’ and he having collected fare from 20 passengers failed to issue tickets to them. In the departmental enquiry, the Enquiry Officer, on consideration of the statements of the Officials as well as the petitioner held that the charges leveled against the petitioner were proved. The disciplinary authority, considering the nature of the proved charges, imposed punishment of removal from service. The Labour Court, on re-appreciation of the entire material on record, though found that the charges are proved against the petitioner, while

observing that the punishment of removal of the petitioner from service is disproportionate to the charges proved, ordered reinstatement of the petitioner into service without backwages and withholding one annual increment as a measure of punishment. Had the Labour Court held that the charges leveled against the petitioner are not proved, then the petitioner would have been justified in contending that he should be awarded backwages and annual increment, but that is not the case. The Labour Court, having held that the charges leveled against the petitioner are proved, has taken a lenient view and ordered fresh appointment. Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages.

Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (see **U.P. State Brassware Corpn.Ltd. v. Uday Narain Pandey**[1]). It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the Labour Court had passed orders in violation of the principles of natural justice. But the Labour Court has set aside the order of removal passed by the disciplinary authority and ordered reinstatement of the petitioner into service on the ground that the punishment imposed was disproportionate to the proved misconduct. In **Karnataka Bank Ltd. V. A.L. Mohan Rao**[2], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the

disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority was set aside by the Labour Court, it does not mean that the petitioner is entitled to be granted backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 31.07.2006
Es/Grk

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1 (2006) 1 SCC 479
2 (2006) 1 SCC 63